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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

Lynda Rexroat,

Plaintiff,

v.

Prosper Marketplace, Inc.,

Defendant.

**Case No.:**

**PLAINTIFF'S COMPLAINT FOR  
DAMAGES**

- 1. Negligent Violations of the Telephone Consumer Protection Act;**
- 2. Knowing/Willful Violations of the Telephone Consumer Protection Act;**
- 3. Violations of the Rosenthal Fair Debt Collection Practices Act**

NOW COMES, Plaintiff, Lynda Rexroat, by her attorney, and alleges the following against Defendant, Prosper Marketplace, Inc.:

1. Plaintiff brings this action on behalf of herself individually seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendant, in negligently, knowingly, and/or willfully contacting

1 Plaintiff on Plaintiff's cellular telephone in violation of the Telephone Consumer  
2 Protection Act (hereinafter "TCPA"), 47 U.S.C. § 227 *et seq* and in violation of  
3 California's Rosenthal Fair Debt Collection Practices Act (hereinafter "Rosenthal"),  
4 Ca Civ. Code § 1788 *et seq*.

5  
6 2. The TCPA was legislated to prevent companies like Prosper  
7 Marketplace, Inc. from invading Americans' privacy by stopping abusive "robo-  
8 calls." The legislative history "described these calls as 'the scourge of modern  
9 civilization, they wake us up in the morning; they interrupt our dinner at night; they  
10 force the sick and elderly out of bed; they hound us until we want to rip the telephone  
11 out of the wall.' 137 Cong. Rec. 30, 821 (1991). Senator Hollings presumably  
12 intended to give telephone subscribers another option: telling the autodialers to  
13 simply stop calling." Osorio v. State Farm Bank, F.S.B., 746 F.3d 1242, 1255-56  
14 (11th Cir. 2014).

15  
16  
17 3. When enacting the Rosenthal, CA Civil Code § 1788.1(a)-(b), the  
18 California Legislature made the following findings and purpose declaration:

19  
20 (a)(1) The banking and credit system and grantors of credit to consumers  
21 are dependent upon the collection of just and owing debts. Unfair or  
22 deceptive collection practices undermine the public confidence which is  
23 essential to the continued functioning of the banking and credit system and  
24 sound extensions of credit to consumers.

25 (2) There is need to ensure that debt collectors and debtors exercise their  
responsibilities to another with fairness and honesty and due regard or the  
rights of the other.

1 (b) It is the purpose of this title to prohibit debt collectors from engaging  
2 in unfair or deceptive acts or practices in the collection of consumer debts  
3 and to require debtors to act fairly in entering into and honoring such debts,  
4 as specified in this title.

## 5 **JURISDICTION AND VENUE**

6 4. Subject-matter jurisdiction of this Court arises under 28 U.S.C. § 1331  
7 and 47 U.S.C. § 227(b)(3). See Mims v. Arrow Financial Services, LLC, 565 U.S.  
8 368 (2012), holding that federal and state courts have concurrent jurisdiction over  
9 private suits arising under the TCPA.

10 5. Supplemental jurisdiction over the state law Rosenthal claim exists  
11 pursuant to 28 U.S.C. § 1367.

12 6. Venue is proper in the United States District Court for the Northern  
13 District of California pursuant to 28 U.S.C. § 1391(b)(1) because Defendant resides  
14 within this District.  
15

## 16 **PARTIES**

17 7. Plaintiff is a natural person residing in Dawson, Georgia.

18 8. Defendant is a business entity conducting business in the State of  
19 California with principal business office located in San Francisco, California.  
20

21 9. Defendant is a “person” as defined by 47 U.S.C. §153 (39).

22 10. At all relevant times, Defendant acted as a “debt collector” within the  
23 meaning of Cal. Civ. Code §1788.2(c).  
24  
25

1           11. At all times relevant to this Complaint, Defendant has acted through its  
2 agents employees, officers, members, directors, heir, successors, assignees and  
3 assignors, principals, corporate affiliates, trustees, sureties, subrogees,  
4 representatives and insurers.  
5

6                           **FACTUAL ALLEGATIONS**

7           12. Defendant has been attempting to collect on a debt from credit that was  
8 extended primarily for personal, family, or household purposes, and was therefore a  
9 “consumer credit transaction” within the meaning of Calif. Civil Code § 1788.2 (e)  
10 of the Rosenthal Act.  
11

12           13. Defendant placed collection calls to Plaintiff seeking and attempting to  
13 collect on alleged debts incurred through purchases made on credit issued by  
14 Defendant.  
15

16           14. Defendant placed collection calls to Plaintiff on telephone number  
17 (678) 283-33XX.  
18

19           15. Telephone number (678) 283-33XX is assigned to cellular telephone  
20 service.  
21

22           16. Defendant placed collection calls to Plaintiff from various phone  
23 numbers including, but not limited to, (866) 615-6319.  
24

25           17. These collection calls were not for emergency purposes as exceptuated  
by 47 U.S.C. § 227(b)(1)(A).

1           18. On information and belief based on the considerable volume, timing  
2 and frequency, and nature of the calls, these collection calls were placed with an  
3 automatic telephone dialing system and/or an artificial or prerecorded voice.

4           19. Defendant did not have Plaintiff's "prior express consent" to place  
5 these collection calls with an automatic telephone dialing system or an artificial or  
6 prerecorded voice.

7           20. On or about November 25, 2019, Plaintiff called Defendant at  
8 telephone number (866) 615-6319.  
9

10           21. Plaintiff spoke with Defendant's employees, identified herself with her  
11 personal information, and requested that Defendant stop calling her cellular phone.  
12

13           22. The request was acknowledged by Defendant's employee, who  
14 represented to Plaintiff that the request would be honored.  
15

16           23. Plaintiff revoked any consent, explicit, implied, or otherwise, for  
17 Defendant to call her cellular telephone with automatic telephone dialing system or  
18 an artificial or prerecorded voice.  
19

20           24. Despite Plaintiff's request and Defendant's assurance, Defendant  
21 continued to place these collection calls to Plaintiff's cell phone after November 25,  
22 2019.

23           25. Between November 27, 2019 and January 18, 2020, Defendant placed  
24 one hundred twenty-three (123) of these collection calls to Plaintiff's cell phone.  
25

1           26. Defendant often placed multiple collection calls to Plaintiff's cell  
2 phone per day, calling as many as nine (9) times in a single day.

3           27. Defendant knew or should have known that Plaintiff no longer wanted  
4 it to place these collection calls.

5           28. Defendant did not have Plaintiff's prior express consent to use an  
6 automatic telephone dialing system or an artificial or prerecorded voice to place  
7 these collection calls.

8           29. Defendant placed these collection calls intending for Plaintiff to  
9 succumb to its harassing behavior and ultimately make a payment.  
10

11  
12                               **FIRST CAUSE OF ACTION**  
13           **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**  
14           **PROTECTION ACT, 47 U.S.C. § 227 *et. seq***

15           30. Plaintiff repeats and incorporates by reference into this cause of action  
16 the allegations set forth above at Paragraphs 1-28.

17           31. The foregoing acts and omissions of Defendant constitute numerous  
18 and multiple negligent violations of the TCPA, including but not limited to each and  
19 every one of the above cited provisions of 47 U.S.C. § 227 *et seq*.  
20

21           32. As a result of Defendant's negligent violations of 47 U.S.C. § 227 *et*  
22 *seq.*, Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and  
23 every violation, pursuant to 47 U.S.C. §227(b)(3)(B).  
24  
25

1           33. Plaintiff is also entitled to injunctive relief prohibiting such conduct in  
2 the future.

3                               **SECOND CAUSE OF ACTION**  
4           **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE**  
5           **CONSUMER PROTECTION ACT,**  
6                               **47 U.S.C. § 227 et. seq.**

7           34. Plaintiff repeats and incorporates by reference into this cause of action  
8 the allegations set forth above at Paragraphs 1-28.

9           35. The foregoing acts and omissions of Defendant constitute numerous  
10 and multiple knowing and/or willful violations of the TCPA, including but not  
11 limited to each and every one of the above cited provisions of 47 U.S.C. § 227 *et*  
12 *seq.*

13  
14           36. As a result of Defendant's knowing and/or willful violations of 47  
15 U.S.C. § 227 *et seq.*, Plaintiff is entitled an award of \$1,500.00 in statutory damages,  
16 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. §  
17 227(b)(3)(C).

18  
19           37. Plaintiff is also entitled to seek injunctive relief prohibiting such  
20 conduct in the future.

21  
22                               **THIRD CAUSE OF ACTION**  
23           **VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION**  
24           **PRACTICES ACT, CA CIV CODE § 1788 et seq.**

25           38. Plaintiff repeats and incorporates by reference into this cause of action

1 the allegations set forth above at Paragraphs 1-28.

2 39. Defendant violated the Rosenthal based on the following:

3 a. Defendant violated the §1788.11(d) of the Rosenthal by continuously  
4 causing Plaintiff's telephone to ring repeatedly or continuously to  
5 annoy the person called; and

6 b. Defendant violated the §1788.17 of the Rosenthal by continuously  
7 failing to comply with the statutory regulations contained within  
8 section 1692d the federal Fair Debt Collection Practices Act, *15 U.S.C.*  
9 *§ 1692 et seq.*  
10  
11

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, Lynda Rexroat, respectfully requests judgment be  
14 entered against Defendant, Prosper Marketplace, Inc., for the following:  
15

16 **FIRST CAUSE OF ACTION**

17 40. For statutory damages of \$500.00 multiplied by the number of  
18 negligent violations of the TCPA alleged herein one hundred twenty-three (123) for  
19 a total of sixty-one thousand five hundred dollars (\$61,500.00); and  
20

21 41. Actual damages and compensatory damages according to proof at time  
22 of trial.

23 **SECOND CAUSE OF ACTION**

24 42. For statutory damages of \$1,500.00 multiplied by the number of  
25 knowing and/or willful violations of TCPA alleged herein one hundred twenty-three



(123) for a total of one hundred eighty-four thousand five hundred dollars (\$184,500.00); and,

43. Actual damages and compensatory damages according to proof at time of trial;

**THIRD CAUSE OF ACTION**

44. Declaratory judgment that Defendant's conduct violated the Rosenthal Fair Debt Collection Practices Act;

45. Statutory damages of \$1,000.00 pursuant to the Rosenthal Fair Debt Collection Practices Act, *Cal. Civ. Code §1788.30(b)*;

46. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collection Practices Act, *Cal. Civ Code § 1788.30(c)*, and;

47. Actual damages and compensatory damages according to proof at time of trial.

**ON ALL CAUSES OF ACTION**

48. Actual damages and compensatory damages according to proof at time of trial;

49. Costs and reasonable attorneys' fees, and;

50. Any other relief that this Honorable Court deems appropriate.

**JURY TRIAL DEMAND**

51. Plaintiff demands a jury trial on all issues so triable.

RESPECTFULLY SUBMITTED

Dated: June 8, 2020

By: /s/ Carlos C. Alsina-Batista

Carlos C. Alsina-Batista

CA Bar No. 327286

Attorney for Plaintiff, Lynda Rexroat